

PUBLICATION

Wearable Tech in the Workplace, Version 2.0

Authors: Zachary B. Busey
March 17, 2015

Wearable technology or wearable tech is the latest craze in personal electronics. The phrase encompasses anything electronic that is worn by a user. It took center stage at the 2014 Consumer Electronics Show, and since then, it has slowly but deliberately moved from fad to mainstream. If Apple's track record of making products for the masses holds true, wearable tech will continue to take off with the release of the Apple Watch.

We have given thought to the types of litigation that employers could see as a consequence of wearable tech and other technology in the workplace.

Disability Discrimination. One of the most championed aspects of wearable tech is that it allows users to learn more about their health. From heart and glucose monitoring to sleep and movement tracking, wearable tech quantifies and displays information about our health that previously could only be learned from a doctor. As this information becomes more available, discussions and conversations about it become more common. When those conversations move into the workplace and employees openly discuss their health and health issues, claims of disability and perceived disability discrimination become more common.

Negligence & Tort Claims. This comes from a recent, viral news story. A California driver was pulled over and cited for wearing Google Glass. Google Glass looks like a pair of normal glasses; however, the lenses double as an interactive, smartphone-like display. California, like many states, has laws against the use of interactive screens while driving. If an employee was using a piece of wearable tech at the time of an accident, the negligence and tort claims filed against the employee and the company would be much more difficult to defend. All driving and motor vehicle policies should expressly forbid the use of cell phone(s) or any other electronic device(s) while operating company vehicles or while operating a vehicle on company time.

Privacy & Data Issues. Constant connectivity: that is another strong selling point for wearable tech. What is the point of knowing your heart rate or how many steps you take in a day if you cannot instantly upload that information to Twitter or Facebook? To do this, wearable tech must, of course, connect to the Internet. When worn at work, an employee's wearable tech connects to the employer's Internet. If the employer's Internet is compromised and private information or data is taken from the employee's wearable tech (for example, credit card or protected health information), the employer could be held liable. This area of the law is rapidly developing. For now, the best approach is a policy that covers how and when personal devices may be connected to company-provided Internet.

Religious Discrimination & Labor Issues. Employees are not the only ones purchasing wearable tech. Radio Frequency Identification or RFID is a technology that allows for real-time tracking of objects. When placed in a wearable device, it allows for the real-time tracking of employees, for example, in a warehouse or on a construction worksite. RFID technology can be combined with GPS technology for tracking an employee (or object) over greater distances. With this technology, employers can account for the safety and location of their employees in real time. But they can also learn if an employee visits temple or church on a break or between shifts. Along those same lines, an employer could learn who attended a union vote or meeting held at the jobsite. Should an employer later terminate the employee who visited church or the employee who

attended the union vote, the employer could be hit with a religious discrimination lawsuit or an unfair labor practice charge. The employee would argue that the employer's real-time tracking allowed the employer to learn of his or her otherwise unknown religious and/or union activities.

The law will continue to develop around wearable tech, and we are constantly working to better understand technology's overall impact on the workplace. In the meantime, employers should update their policies and training protocols to reasonably address the ever growing and varying consequences of technology in the workplace.